inordinate power because no competitor could provide an alternative to the PBX access trunk. The Judge noted as well that New York Telephone already had some pricing flexibility.

It is possible to provide greater flexibility without allowing the monopoly abuses feared by the Judge. The local exchange companies will be allowed a wider use of individual case base pricing arrangements by removing the current restrictions on line size and distance from the central office if, concurrently, the local exchange companies file rate stability options for PBX trunk service. While the individual billing arrangement prices will not be specified by tariff, the tariffs shall include general provisions designed to allow non-discriminatory access to such arrangements for similarly situated customers. Additionally, appropriate cost data to support each arrangement must be filed with staff so that no cross subsidization by basic services occurs.

The larger issue of whether the rates for Centrex and PBX exchange access service should be unbundled is being examined in two ongoing proceedings, the Intellipath case[1] and the open network architecture proceeding,[2] and the issue will be resolved there.

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[1] Case 88-C-063.

[2] Case 88-C-004.

We will also propose that the Legislature amend the Public Service Law to allow the approval of the deregulation not only of nondominant firms, but also the selective deregulation of competitive services provided by dominant firms. Dominant firms may face competition in the provision of some services--Centrex is a good example--and it may be reasonable to deregulate such services when adoption of cost allocation rules makes it possible to protect against cross-subsidies. The FCC and several states already have most of this capability and we will recommend a similar approach for New York.

Private Line, Collocation, and Interconnection

In the New York Metropolitan Area, New York Telephone Company faces growing competition from providers such as Teleport, which collect traffic of large customers and transport it over dedicated, private lines between customer locations or to interexchange carriers' points of presence. In this case, Teleport sought to collocate its fiber optic facilities inside New York Telephone central offices in order to duplicate the local exchange company's ability to aggregate low volume traffic.

Teleport asserted that it had improperly been prohibited from competing with New York Telephone by New York Telephone's refusal to allow it to interconnect. It claimed we should require New York Telephone to collocate Teleport facilities at the local exchange companies' central offices, and to offer transport and switching services separately.

New York Telephone opposed Teleport's request.

Judge Harrison found no basis for adopting Teleport's proposal. He determined that its presentation reflected an "artificial perspective"[1] on competition in telecommunications and recommended that it be rejected.

The Judge's view of competition is too restrictive, and it clashes with emerging open network architecture concepts that encourage unbundling the network into elemental components and offering them on a non-discriminatory basis. With some limitations, therefore, Teleport's proposal is acceptable. Allowing liberal interconnections with the local exchange network generally fosters competition and will likely provide more effective and efficient carrier access service.

Teleport, as well as other interconnectors and similar networks of large users, should be allowed comparably efficient interconnections (or, in other words, virtual

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[1] R.D., p. 167.

collocation) for the purpose of competing with New York Telephone for the transport portion of private line and dedicated carrier access services. If Teleport (or others) can offer better service, better terms, or lower prices, the public interest will be enhanced.

Therefore, New York Telephone will be required to establish comparably efficient interconnections at its local central offices with registered or certified carriers for the carriage of intrastate private line traffic in the New York metropolitan LATA. New York Telephone shall file, within 60 days, tariffs providing for non-switched collocation/interconnection. The physical location of the interconnection point may be outside of a New York Telephone building, but the interconnection must be technically and economically comparable to actual collocation and the terms must be reasonable. A prima facie definition of reasonableness would be the prior acceptance of the terms by the connecting party, as long as the same terms are available to others seeking collocation/interconnection. We are aware that such arrangements may be complicated, and we will work to insure that any arrangements are fair to all.

Our action is designed to foster competition while minimizing unreasonable or extraordinary adverse impacts on other ratepayers. To do so it must be evenhanded and must consider mitigating demonstrated losses of existing

contribution that would result from this action. Accordingly, we may require that an interconnector, such as Teleport, bear some of the burdens concomitant to the new rights it receives. This proposal could be implemented for example, by requiring an "equal access" tariff structure, which produces a contribution in support of basic services that is derived on a non-discriminatory basis from both New York Telephone and other carriers. The purpose of any such proposal should not be to increase available contribution but only to mitigate projected contribution losses. On a broader scale, we are evaluating myriad issues concerning the establishment of a universal service fund to support services, such as lifeline service, emergency service, the placement of coin telephones in uneconomic areas, and relay service for the deaf.

Teleport must also allow similar access to its facilities by New York Telephone or other carriers. As we note below, we shall allow New York Telephone to petition to be made whole for these changes, which were not contemplated by the current moratorium.

The removal of this barrier to the entry of private line competitors must be accompanied by a concomitant increase in the existing carriers' pricing flexibility. Accordingly, when the New York Telephone interconnection tariffs are approved, that company will be allowed pricing

flexibility for its high capacity private line service and interoffice private line circuits.

Specifically, New York Telephone will be granted the authority to increase rates for high capacity and interoffice private line services by 25% annually, and to decrease them without limitation, so long as rates cover their relevant incremental costs. This tariff flexibility, designed to further spur competition, will apply throughout the New York Metropolitan LATA (where we are authorizing further competition), but New York Telephone will also be permitted to offer individual case billing arrangements on a non-discriminatory basis for these services in the New York Metropolitan LATA in response to competitive requests for proposals. In order to prevent cross-subsidization by basic services, New York Telephone shall file with our staff cost support for price changes to competitive private line rate elements and individual case billing arrangements. The rates may become effective immediately upon such a filing, unless staff brings concerns to our attention. New York Telephone may elect to attempt to justify, separately, a private line rate restructuring of some of these services on cost grounds.

Proposals for specific services in the New York Metropolitan LATA need not be conditioned upon completion of the case record in the ongoing private line generic rate structure case. This in no way abrogates our overall concern

that rates for private line services in total--or for individual non-competitive private line services--are neither cross-subsidized by basic services nor over-priced, an issue that is being considered in the generic private line case. New York Telephone shall file such studies as may be determined in that proceeding to support their revenue requirements in its future rate proceedings.

Some of the larger independents, such as Rochester Telephone Corporation and ALLTEL, have made similar arguments with respect to the need for private line pricing flexibility. However, the record does not reveal that these companies face the degree of competition that New York Telephone is exposed to in the New York Metropolitan LATA. Nevertheless, these companies may receive flexibility on their private line services where there is a showing that such flexibility is required, and where appropriate interconnection arrangements, if sought by would-be competitors, are provided. New York Telephone will be afforded the same opportunity for its upstate LATAs. Further, where competitors provide dedicated circuits directly to a customer's premise, and a showing can be made that flexibility is needed, we would be willing to consider granting pricing flexibility for central office private line loop facilities.

Switched Carrier Access Services

In this case, Teleport requested the ability to interconnect its fiber optic facilities with New York Telephone central offices through collocation. By this order, this request has been granted for unswitched (private line) services. Teleport's request for switched service will not be granted now. The unbundling of switched access service elements necessary to accommodate such a competitive alternative would result in a significant restructuring of access charges, and NYT's pricing flexibility for switched access is constrained until September 1991 by provisions of the Modification of Final Judgment. These considerations dictate that we not unbundle switched carrier access charges now. The cost basis for access charges is being reviewed in the generic access charge proceeding, and the issue will be considered further there. After the Modification of Final Judgment restrictions are removed in 1991, this market will likely become competitive. We will expand the ongoing access charge proceeding to review our policies for this market.

Local Exchange Company Carrier Access Issues

Local exchange companies are required to provide access to their network to interexchange carriers. In this proceeding, New York Telephone asserted its access service is

faced with significant competition. It said that extensive bypass would reduce the usage of its network and that those who continued to use the network would inevitably have to pay higher prices in order to allow New York Telephone to recover its costs.

The threat of uneconomic bypass exists where access rates exceed the actual costs of access in order to provide a contribution to basic exchange service.

Judge Harrison found a need only to price carrier access charges at cost, so that uneconomic bypass would not be fostered. He determined that the local exchange companies continue to have a dominant market share, and that it is thus difficult to justify greater flexibility in setting carrier access rates. This issue has been considered in the access charge proceeding, where we directed the performance of cost studies. It will be reviewed there, after the results of the cost studies become known.

Intra-LATA Toll

The record in this case shows that there is little competition at present, although ATTCOM and the OCCs are permitted to compete with the local exchange companies for intra-LATA toll business. New York Telephone asserted that the intra-LATA toll market is competitive. Judge Harrison was not persuaded. New York Telephone is now by far the

dominant provider of service. Therefore, we shall reject New York Telephone's request that the local exchange companies be relieved of regulatory oversight.

Also at issue here is MCI's assertion that competition should be fostered by requiring that New York Telephone impute access charges to itself and offer customers a choice of the intra-LATA carrier to be accessed by "1+" dialing.

The costs and benefits of that action are not developed on this record. Inasmuch as these issues are directly related to our ongoing examination of access charges and intra-LATA toll rates, they will be considered there. In the interim, regulatory procedures in the area of intra-LATA toll services will remain unchanged.

PUBLIC TELEPHONE SERVICE

In 1985, we allowed COCOTs to be connected to the network. The Public Service Law limits our authority over COCOT providers to the establishment and enforcement of operating rules.

New York Telephone contended that its public telephones face competition from COCOT providers. It stated that about 15,000 telephones were furnished by COCOT providers in its service territory and that because there were minimal entry barriers, it faced a serious competitive threat.

Judge Harrison found that although the record was not well developed, COCOT providers appear to be a competitive force. But he found that New York Telephone made no effort to explain how regulation of its telephone service should be reduced in the face of that competition. More broadly, he noted that the public debate that raged for years over the ten-cent coin rate shows that the public has come to regard public telephone service as an important aspect of this system and that, despite lower barriers to entry, there are undoubtedly locations where the public interest is served by the provision of public telephone service but where COCOT providers are not tempted to locate. Thus, the Judge recommended exploring how New York Telephone would act before reducing regulation of public telephone service.

The record here is not well developed.[1] A separate proceeding has been instituted to examine these issues in greater detail, with particular concern to insuring both choice and quality of service to end users.[2] The regulatory treatment of New York Telephone's own coin service may be considered in another proceeding to be established.

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[1] It is not clear, for example, how deregulation would affect the COCOT market and ratepayers. We are also concerned about maintaining coin service in some uneconomic locations and insuring access to 911 service.

[2] Case 27946, Order (issued February 22, 1989).

BILLING AND COLLECTION SERVICES

In our access charge opinion,[1] we noted that the Federal Communications Commission had recently detariffed billing and collection service offered to interexchange carriers by local exchange companies. We evaluated their arguments alleging discrimination and the need for a competitive response to other services and concluded that the deaveraging of billing and collection service should await the general deaveraging of access charges.

The issue has been raised again in this case. New York Telephone asserted again the viability of competition and asserted that the service should be deregulated.

Judge Harrison noted that the circumstances appeared not to have changed from the time the access charge opinion was issued and that the record in this proceeding is no more or less compelling than the case for deaveraging made there.

The deregulation of these services does not necessarily serve the public interest. The local exchange companies have a particularly effective and broad reaching billing and collection capability, which has been developed for and funded by ratepayers. That service now has monopoly attributes, such as the bill recording function, and the

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[1] Case 28425, Access Charges, Opinion No. 87-11, mimeo pp. 139 et seq.

continually updated customer information data base, which are significant bottlenecks. Therefore, local exchange company provision of billing and collection services will continue to be regulated. We foresee, however, that new network signalling technologies, such as SS-7 and Automatic Number Identification, may broaden the availability of other billing services, and that policy may need to be reevaluated as the market becomes more competitive.

In the meantime, however, greater flexibility may be provided by allowing the local exchange companies to offer billing and collection services through individual billing contracts. Tariffs will still be required to be offered for those portions of billing collection services which use bottleneck facilities. These tariffs may be filed by each local exchange company. If a company introduces a billing and collection service that does not require access to either the monopoly recording function or the use of local exchange company customer records, we will entertain a petition to allow it to treat the costs below the line. Costs and revenues of such services shall be recorded as determined in the pending cost allocation proceeding.[1] We shall, in any event, review the proposals to insure our responsibilities

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[1] Case 88-C-136, Order Adopting Interim Cost Separation Standards and Requesting Comments on Proposed Standards (issued September 28, 1988).

under the Public Service Law are met. Billing and collection functions will be monitored closely to insure that pricing and operation policies are not used to suppress enhanced service providers or, in instances where local exchange companies offer enhanced services, to skew competition.

OTHER MATTERS

Moratorium Impact

The changes in private line interconnection and pricing policies adopted here were not contemplated when the current New York Telephone rate moratorium was negotiated. Similarly, the reduction of PBX rates through the offering of rate stability plans and the offsetting additional pricing flexibility of Centrex also will change the environment contemplated by the moratorium. We are willing, therefore, to adjust the moratorium for the net impact of these changes. New York Telephone may petition us to recover those amounts. It shall bear the attendant burden of proof.

Procedural Objections

In their briefs on exceptions, several parties raised various objections to the manner in which Judge Harrison conducted the proceeding. The exceptions relate primarily to procedural issues and the Judge's analytical framework.

Although the exceptions are not all recited in this Opinion, we have considered them all and find them uniformly unpersuasive. The Judge conducted the proceeding efficiently and effectively, and the excepting parties' arguments are rejected.

CONCLUSION

The public interest is enhanced by the emergence of competition in the telecommunications industry. The policies articulated above are intended to insure that the transition to competition is done wisely.

The Commission orders:

1. New York Telephone Company shall file, within 60 days of the issuance of this Opinion and Order, tariff leaves providing for non-switched virtual collocated interconnection, as described in the foregoing Opinion.

2. AT&T Communications of New York, Inc. is requested to file a response to the offer of an alternative regulatory plan within 60 days of the issuance of this Opinion and Order.

3. To the extent it is consistent with this Opinion and Order, the recommended decision of Administrative Law Judge J. Michael Harrison, issued May 9, 1988, is adopted

as part of this order. Except as here granted, exceptions to the recommended decision are denied.

4. New York Telephone Company may file revisions to its tariffs to effect the Commission's decisions concerning Private Branch Exchange rates, as described in the foregoing Opinion.

5. This proceeding is continued.

By the Commission,

(SIGNED) JOHN J. KELLIHER
Secretary

APPENDIX A

Parties Filing Briefs to the Commission

Party	Referred to As
New York Telephone Company	New York Telephone or NYT
American Express Company, Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc.	User Parties
Rochester Telephone Corporation	Rochester Telephone
ALLTEL New York, Inc.	ALLTEL
Suffolk County and Nassau County	Suffolk
Contel Cellular, Inc.	Contel Cellular
Cellular Telephone Company, Syracuse Telephone Company, and Utica Cellular Telephone Company	Cellular Telephone
AT&T Communications of New York, Inc.	ATTCOM
Department of Public Service staff	staff
Empire Association of Long Distance Telephone Companies, Inc.	Empire
Contel of New York, Inc.	Contel
New York City Energy and Telecommunications Office	New York City

APPENDIX A

Party	Referred to As
Rochester Telephone Mobile Communications	Rochester Telephone Mobile
Albany Telephone Company, Buffalo Telephone Company, and Genesee Telephone Company	Albany Telephone
NYNEX Mobile Communications Company	NYNEX Mobile
Teleport Communications	Teleport
Non-Affiliated Cellular Retailers (American Mobile Communications, Cellcom Telephone Company and Nationwide Cellular Services	American Mobile
International Intelligent Buildings Association, Inc.	IIBA
New York Clearing House Association and Committee of Corporate Telecommunciations User	NYCHA
MCI Telecommunications Corporation	MCI

APPENDIX B

ALTERNATIVE STATE SPECIFIC REGULATORY PLAN FOR ATTCOM-NY (AFTER CURRENT MORATORIUM EXPIRES)

- CAP MTS PRICES (Until January 1, 1992)
  - -BASIC MESSAGE TOLL SERVICES
  - -OPERATOR SERVICES ASSOCIATED WITH BASIC TOLL CALLING
  - -DIRECTORY ASSISTANCE

- PRICE FLEXIBLY ALL NON-MTS SERVICES, ANNUAL +25% LIMIT ON INDIVIDUAL RATE ELEMENTS

- STREAMLINE INTRODUCTION OF NEW SERVICE OFFERINGS
  - -PRICE FLEXIBILITY AND NO RATE CAPS
  - -STREAMLINED FILING PROCEDURES
  - -NO INITIAL COMMISSION STAFF COST SUPPORT ANALYSIS REQUIRED

- PRESUME PROPRIETY OF RATE CHANGES
  - -NO PRE-ANALYSIS OF RATE CHANGES MADE WITHIN BOUNDS OF MORATORIUM
  - -CHANGES ASSUMED TO BE PROPER IN ABSENCE OF SHOWING TO THE CONTRARY

- ALLOW ANNUAL REVENUE INCREASE FROM PRICE INCREASES LIMITED TO 2.5% WITHOUT HEARINGS

- CONTINUE UBIQUITOUS SERVICE PROVISION

- PROVIDE FOR STATEWIDE AVERAGE MTS RATES EXCEPT AS ACCESS CHARGES MAY BE DEAVERAGED AND FURTHER COMMISSION APPROVAL OBTAINED

- SHARE EARNINGS ABOVE THRESHOLD - AVERAGED OVER ENTIRE MORATORIUM PERIOD

- FLOW THROUGH (UP OR DOWN)
  - -ACCESS CHARGE CHANGES
  - -SEPARATIONS CHANGES
  - -COST DIFFERENCES RESULTING FROM CHANGES IN FEDERAL, STATE OR LOCAL TAX LAWS
  - -REGULATORY IMPOSED COST CHANGES

APPENDIX B

- MONITOR ATTCOM OPERATIONS
  - -QUARTERLY RATE AND VOLUME ANALYSIS
  - -QUARTERLY AND ANNUAL FINANCIAL FILINGS

- PROVIDE FOR REDUCED REGULATION BEGINNING ON JANUARY 1, 1992

(Unless there is a substantial change in the circumstances we envision):

- FULL PRICING FLEXIBILITY
- MAINTENANCE OF ITS COMMON CARRIER OBLIGATIONS
- CONTINUATION OF ITS UNIVERSAL SERVICE OBLIGATION
- INSURE CONSUMER PROTECTION

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 29469 - Proceeding on Motion of the Commission to Review Regulatory Policies for Segments of the Telecommunications Industry Subject to Competition.

GAIL GARFIELD SCHWARTZ, Commissioner, Concurring:

This highly significant opinion is, at one and the same time, ground-breaking and precedented. It breaks ground because it advances competition in the local exchange area, by "invading" the central office. It is precedented because it represents one more step in a series of decisions taken by the New York Public Service Commission to promote efficiency in the provision of telecommunications services, recognizing that the best way to achieve and preserve efficiency is through competition.[1]

Of course, conditions in New York State, owing to the concentration of large users in New York City, contrast markedly with those in other parts of the country. It is the

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[1] These decisions date back more than 15 years, beginning with the decision to allow interconnection of customers' own premise equipment, which antedated the federal action to do the same. There followed the deregulation of inside wire, the permission for intra-LATA toll competition, and flexible pricing under incentive regulation for both local exchange carriers and ATTCOM (the so-called moratoriums on general rate cases). And even in non-competitive areas, we have been moving towards cost-based pricing that contributes to efficient markets. To that end, we required removal of fixed costs from access charges, and brought about New York Telephone Company toll rate reductions thereby.

very density of these users, combined with their high usage volume, that has made it possible for competitors to challenge New York Telephone Company in the provision of private line service, and has permitted the substantial growth of competition with Centrex. The minimum scale required for firms to contest the incumbent monopoly is not yet known, but by this opinion, the Commission is acknowledging contestability in other markets within the state as well.

Moreover, no service--basic or non-basic, large or small user--should be considered permanently non-competitive, and we should strive to break down barriers and eliminate bottlenecks as much as possible whenever and wherever they occur. Conceivably, some of the so-called non-competitive services could become competitive as rates now below cost rise to cost. The objective of regulation in communications, in my view, should be to follow where competition exists, to get out of the way where it might exist but doesn't, and even to lead competitors to the market if feasible and if in the public interest.

This does not mean, however, that the Commission should view its responsibility as that of unravelling the network that is now in place, simply because it may be technically feasible to do so. An enormous amount of sunk investment exists, much of which has a long useful life ahead

of it. This plant and equipment purchased for monopoly service provision must be paid for, and if monopoly services are to utilize newer, more technologically advanced equipment along with competitive services, then ratepayers must contribute to recovering a fair share of those costs as well. Thus, cost allocation issues, which were not a principal focus of the instant proceeding, will become ever more critical in the future. Once rules have been set for allocating costs, it should be easier to determine what investments are economic, when they are to be jointly used by competitive and monopoly services. And that in turn should help to compensate the telcos for lost contribution, even as all costs are gradually translated into economic prices.

Regarding expectations for the future, it seems clear that the Commission must evaluate not only the structure of the industry, but also the behavior of the players. For example, should the telephone companies make wider use of market research techniques normally used by competitive firms, that itself will be an indicator that they do face robust competition. And we might make more sophisticated use of structural measures such as concentration, market share, etc. Not only do they give clues as to whether a firm can face effective competition; they also, when analyzed in conjunction with other industry variables, such as demand growth, tell us something about

pace, and something about anomalies. It may be that an industry segment theoretically could be competitive but is not showing much change in these structural variables. Then we would ask why, and whether regulation is really the problem. In other words, this opinion by no means closes the competition issue, and the Commission should, in my judgment, initiate an ongoing effort to gauge the potential as it develops in many services and many geographical areas.

While it may well be that many intra-LATA services, owing to engineering and technical considerations, may never be subject to competition unless the LECs are grossly inefficient and incompetent, the jury is still out regarding the dimensions of the natural monopoly. Rather than consider which elements of the telephone company operations are subject to competition, the Commission should now focus on determining which elements are NOT subject to competition.

One way to advance this effort would be to encourage market tests. In such a volatile environment, it seems that only trials can enlighten us as to the potential for durable competition. We have ordered trials in other proceedings (such as the ISDN). I would like similar trials ordered for intra-LATA equal access. And I would like to see the Commission deliberately search for and assist in the design of other viable trials.

In numerous ways, the transitions from monopoly to competition and from rate-base, rate-of-return regulation to incentive regulation[1] mean that the Commission is engaging in a process of mediating among competitors. We are not enthusiastic about doing so, but it may not be possible to avoid it, if incumbents resist feasible proposals to make competition a reality, and if they want to see some of their services deregulated. However, we certainly have to watch out for gaming behavior on the part of the incumbent and the upstart.

The balancing that is required in moving towards competition involves an ongoing assessment of whether the risk of gains is larger than the risk of losses. In concurring in the caveats expressed in this opinion, I wish to make the economist's argument that the magnitude of hardship caused to any class of ratepayers receiving a

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[1] Our incentive regulation approach requires that profits above a prescribed level be shared 50%/50% between stockholders and ratepayers. Companies are now allowed to keep all profits up to and somewhat above a traditionally determined target rate of return. Whether experience will show either that this split is not necessary or that the indexed price cap with a predetermined productivity factor, a la the British and FCC model, is superior, it is too soon to say. Sharing is a fail-safe mechanism that ensures benefits to consumers should soaring profits result from this regulatory practice, and as such, is just and economically reasonable. It might not always be the best mechanism, and experience with incentive regulation will indicate whether it is.